



## Office of the Attorney General

State of Texas

August 14, 1992

DAN MORALES

ATTORNEY GENERAL

Ms. Sandra A. Autry  
Liquidator/Receiver  
Texas Department of Insurance  
Liquidation Division  
P. O. Box 2800  
Austin, Texas 78768-2800

OR92-486

Dear Ms. Autry:

The Texas Department of Insurance asks whether certain financial records of insurance companies in receivership are subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 16182.

Pursuant to the Texas Insurance Code, the Texas Department of Insurance was appointed Receiver for the former National County Mutual Fire Insurance Company, Walker General Agency, Inc., and Southern Life Investment Company, for the purpose of prosecuting claims on behalf of the former insurance companies and liquidating the assets of the former insurance companies. *State of Texas v. National County Mut. Fire Ins. Co., Walker General Agency Inc., and Southern Fire Inv. Co.*, No. 453,031 (Dist. Ct. of Travis County, 201st Judicial Dist. of Texas, Nov. 15, 1990). The department has received a request from Robert H. Walker for the financial records of National County Mutual, Walker General, and Southern Life for October 1988 to the present. The department claims that in its capacity as Receiver for the former insurance companies it is not a governmental body and therefore is not subject to the Open Records Act. The Receiver also claims that the requested information is excepted by Open Records Act sections 3(a)(1), 3(a)(3), and 3(a)(11).

The Receiver claims that it is not a governmental body within the meaning of the Open Records Act and therefore the Open Records Act does not apply. Whether the Receiver is or is not a governmental body is an important question of first impression and resolution of this question could have implications beyond this Open Records Act ruling. However, we believe that resolution of this issue is not necessary because there is another basis for decision in this matter.

This office has been advised that the Receiver is prosecuting suits against: the former officers and directors of the insurance companies for breach of fiduciary duty (including Walker family members); the former legal counsel for the former insurance companies for assisting in the fraudulent transfer of assets; and various individuals and business entities owned or controlled by Walker for fraudulent transfer of the assets of the former insurance companies. *See Department of Insurance as Receiver of Nat'l County Mut., et al. v. Blair Walker, et al*, No. 456,075-A (Dist. Ct. of Travis County, 331st Judicial Dist. of Texas); *Department of Insurance as Receiver of Nat'l County Mut., et al. v. Gardere & Wynn*, No. 478,376 (Dist. Ct. of Travis County, 250th Judicial Dist. of Texas); *Department of Insurance v. Ramnath H. Maraj, Anita Zapata Walker, et al.*, No. 492, 681 (Dist. Ct. of Travis County, 167th Judicial Dist. of Texas).

Open Records Act section 3(a)(3) excepts from required public disclosure

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or a political subdivision is, or may be, a party, . . . that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

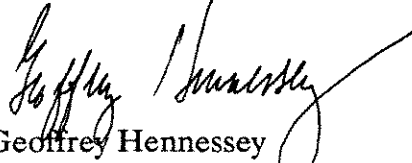
Section 3(a)(3) is intended to allow a government agency to protect its position in litigation by forcing parties seeking information relating to that litigation to obtain it through discovery, if at all. Open Records Decision No. 551 (1990). For information to be excepted from public disclosure by section 3(a)(3), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.).

The requested documents obviously relate to the pending litigation. Therefore, the requested documents may be withheld pursuant to section 3(a)(3). Please note that this ruling applies only until the resolution of the pending litigation and to the documents at issue here. Because we resolve this matter under section 3(a)(3), we do not address your claim that the documents are also excepted under sections 3(a)(1) and 3(a)(11).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-486.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Geoffrey Hennessey', written over the typed name.

Geoffrey Hennessey  
Assistant Attorney General  
Opinion Committee

GH/lmm

Ref.: ID# 16182

cc: Mr. Robert H. Walker  
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